

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

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| <p>Plaintiff:<br/>VERONICA JUAREZ et al</p> <p>vs</p> <p>Defendant:<br/>CITY OF RANCHO MIRAGE</p> | <p>FOR COURT USE ONLY</p> <p><b>FILED</b><br/>SUPERIOR COURT OF CALIFORNIA<br/>COUNTY OF RIVERSIDE</p> <p>OCT 29 2018<br/><b>S. Salazar</b> <i>SS</i></p> <p>CASE NUMBER:<br/>PSC1403469</p> |
| <p><b>DOCUMENT COVERSHEET</b></p>   |  |

FILED  
OCT 30 2018  
CLERK

Full Document Title: Order re Ruling on Plaintiff's Motion to Compel; Honorable Judge Craig G. Riemer

*(If the document is not officially titled, provide the description of what is being filed.)*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

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| CASE TITLE: Juarez v. City of Rancho Mirage         | Department 5 | <b>FILED</b><br>SUPERIOR COURT OF CALIFORNIA<br>COUNTY OF RIVERSIDE<br><br>OCT 29 2018<br><b>S. Salazar</b> <i>SS</i> |
| CASE NO.: PSC1403469                                |              |   |
| DATE: October 29, 2018                              |              |   |
| PROCEEDING: Ruling on Plaintiff's Motions to Compel |              |   |

Plaintiff Paz moved to compel the City to produce a PMQ on two subjects, or alternatively for evidentiary sanctions, and for monetary sanctions in the sum of \$4,275. Plaintiff Paz also moved to compel the City to provide further responses to a set of requests for production of documents, and for sanctions in the sum of \$5,176. Both motions were argued and taken under submission. The Court now rules as follows.

On the motion to compel a further PMQ deposition:

- The declaration filed with the plaintiff's reply is not considered.
- The plaintiff's motion is denied, including his requests for sanctions.
- The defendant's request for sanctions is denied.

On the motion to compel further production of documents:

- The defendant's evidentiary objections are overruled.
- The plaintiff's motion is granted in part and denied in part. Specifically, as to the request to compel further responses, it is granted. The defendant shall serve further responses without objection within 20 days. All emails that contain any of the specified terms shall be produced.
- The plaintiff's request for sanctions is granted. The City of Rancho Mirage and its counsel, Graves & King, shall pay, jointly and severally, monetary sanctions to plaintiff's counsel in the sum of \$4,676.
- The plaintiff's request for an order forcing the defendant to hire a computer expert is denied.
- The defendant's request for sanctions is denied.

**Analysis:**

The motion to compel a further PMQ deposition.

As the plaintiff notes in his motion, the purpose of the PMQ provision in the Discovery Act is "to eliminate the problem of trying to find out who in the corporate hierarchy has the information the examiner is seeking." (*Maldonado v. Superior Court* (2002) 94 Cal.App.4th 1390, 1395.)

Topic #5 is described as “Paul Franco’s role and actions in the purchase of the property, the purchase of any coaches, meetings with any plaintiffs, and communications with any plaintiffs, concerning the property.” That demonstrates that the plaintiff knows exactly who has the information that he is seeking: Paul Franco. Similarly, in the motion the plaintiff complains that the designated witness, Mr. Smith, did not have sufficient knowledge about the meetings Franco had, the identity of the people with whom Franco met, what Franco said or otherwise communicated to the people with whom he met, and what Franco studied.

When the deposing party knows the individual who has personal knowledge of the topics on which the witness is to be questioned, use of a PMQ procedure is unnecessary and likely to be unproductive. The Court declines to compel another round of fruitless testimony. Even if Smith were to so extensively interview Franco that Smith could answer all of the plaintiff’s questions, the answers would be hearsay. The proper remedy is a deposition of Franco himself.

The plaintiff argues that Franco’s testimony will not “bind” the City, and that is why the PMQ procedure is important. But unlike an affirmative response to a request for admission, no interrogatory or deposition answer binds the party giving it. It is always subject to contradiction. And when the basis for that party’s answer is a different witness who later testifies that the earlier answer was incorrect, any damage to the credibility of the party is slight.

Topic #25 is not directed expressly to the actions, communications, knowledge, and thought processes of Franco. Arguably, therefore, Smith’s inability to answer all questions concerning that topic are not subject to the same reasoning as those involving topic #5.

Neither of the two code section concerning motions to compel deposition testimony -- Code of Civil Procedure §§ 2025.450 and 2025.480 – directly address the situation here, in which the party’s PMQ appears and testifies but is not sufficiently knowledgeable to answer all of the examiner’s questions.

The plaintiff cites section 2025.450 as the authority for the relief sought. To the extent relevant, that section says that a motion to compel appearance and testimony may be brought if “a person designated by an organization that is a party under Section 2025.230” fails to appear at the deposition or to proceed with it. (§ 2025.450, subd. (a).) Here, the person designated by the city appears and testified. Therefore, the section does not clearly apply.

On the other hand, neither does section 2025.480, which pertains to situations in which the deponent refuses to answer questions. Here, Smith answered the questions, but sometimes those answers were, “I don’t know.”

The Court was presented with a similar choice in the last motion, decided on April 9, 2018. In that situation, the Court concluded that section 2025.450 was an appropriate vehicle. However, the situation presented there was different. There, the motion addressed a large-scale failure to prepare for the deposition, and thus a wholesale inability to answer the questions posed on dozens of topics. Here, by contrast, Smith did make substantial efforts to prepare for the deposition, and the alleged failures are far more limited.

Moreover, the choice was not as significant in that situation because the plaintiff had prepared a separate statement. A separate statement is expressly required for a motion under

section 2025.480 (Cal. Rules of Court, rule 3.1345(a)(4)), but not for the typical motion under section 2025.450 (*id.*, subd. (b)). In this instance, the plaintiff chose not to prepare such a statement.

A separate statement is not an empty formality. In his motion, the plaintiff is not asking that the City be required to designate a PMQ to answer particular questions identified in the motion. Instead, he is asking for an order compelling a designation specifically regarding topic #25, which was already a topic in the prior deposition. Such a redundant order is justified only upon a showing that Smith was questioned on that topic, was unable to answer those questions, and that inability appears to have been the product of a lack of sufficient investigation or other preparation. Without a separate statement, it is not clear which questions dealt with topic #25, which of Smith's answers to those questions were insufficient, and whether that insufficiency resulted from Smith's lack of reasonable effort to prepare.

The opposition pointed out these problems. In response, the plaintiff could have asked to continue the hearing in order to file a separate statement. The plaintiff did neither. Under these circumstances, the Court denies the motion.

The defendant requests sanctions for the cost of opposing the motion. In view of the ambiguity of which statutory motion is the proper procedure for addressing the problem perceived by the plaintiff, and the Court's prior endorsement of compliance with section 2025.450 in the tentative ruling on the prior motion, the Court cannot find that the plaintiff acted without substantial justification. The defendant's request for sanctions is therefore denied.

The motion to compel further production of documents.

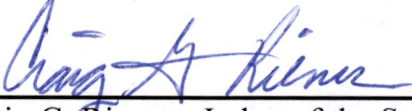
The Court declines to rule on evidentiary objections to non-evidentiary portions of the moving papers. Therefore all objections to the SDRRP are overruled. The Court declines to rule on the objections to the declarations submitted in support of the motion because the evidence to which they are directed is not material to the Court's analysis.

A party may not deliberately misconstrue a discovery request to justify an evasive answer. (*Deyo v. Kilbourne* (1978) 84 Cal. App. 3d 771, 783.) Contrary to the defendant's opposition, syntax did not compel the unreasonable interpretation employed by the defendant. There is nothing in the request that would support a conjunctive interpretation. For instance, the request does not ask for "all" the terms, and the terms are not linked by "and." Moreover, the sheer number of the terms renders a conjunctive interpretation unreasonable. There is no reasonable doubt as to the intended interpretation of the request. That presumably explains why there is no declaration from the defendant's counsel expressing the belief that he believed the intended interpretation was that all 21 terms had to be in any email in order for the request to apply.

At best, the requests were ambiguous. The existence and nature of the alleged ambiguity should have been voiced by the defendant during the defendant's meet-and-confer efforts, if not as soon as the requests were received. Instead, the defendant kept its strained interpretation to itself. Even after the plaintiff cited examples of emails that fell within the requests, the defendant did not explain its interpretation, but rather maintained that it had nothing more to say.

The defendant raised three objections to the document production request. All are overruled. As discussed above, the Court rejects the defendant's concerns about the form of the requests. The defendant does not cite to any privilege log to support its attorney-client or work-product privileges. The defendant does not explain how any of the requests seek documents in the hands of any expert.

The Court finds that the defendant did not act with substantial justification. To the contrary, it appears to have acted in bad faith both when responding to the requests and when responding to the plaintiff's meet-and-confer efforts. Sanctions are awarded in the sum of \$4,676.

  
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Craig G. Riemer, Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
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Riverside, CA 92501  
www.riverside.courts.ca.gov

CLERK'S CERTIFICATE OF MAILING

VERONICA JUAREZ

vs.

Case No. PSC1403469

CITY OF RANCHO MIRAGE

TO:

I certify that I am currently employed by the Superior Court of California, County of Riverside, and that I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the attached on this date, by depositing said copy as stated above.

Court Executive Officer/Clerk

DATED: 10/29/18

By: 606, Deputy Clerk  
SUSAN M SALAZAR

ccm;ac:orwhc,ordwhc

Notice 'CCMM' has been printed for the following Attorneys/Firms  
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